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Ruth Eure  
4795 Edison Avenue  
Boulder, CO 80301

EXAMINER

LU, KUEN S

ART UNIT	PAPER NUMBER
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2177

DATE MAILED: 04/21/2004

5

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/855,867

Applicant(s)

PENROD ET AL.

Examiner

Kuen S Lu

Art Unit

2177

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 2/2/2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 4-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

The Examiner noted the Applicants' amendment "AMENDMENT AND RESPONSE", filed on February 2, 2004. In responding to this response, the Examiner's office action is stated below.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Castor et al. (U.S. Patent 6,246,797, hereafter "Castor") in view of Yeskel (U.S. Patent 6,115,509), and further in view of Jung et al. (U.S. Publication 2003/0014310, hereafter "Jung").

As to Claim 1, Castor teaches the following:

"...means to capture the image of artwork" at col. 3, lines 59-67 where an image capture device of a digital camera system captures images;

"...to collect the images of the artwork" at col. 4, lines 28-32 and col. 9, lines 26-28 where the captured images are stored as image files and then downloaded to an external device, such as computer;

"...to distribute the grouping..." at Fig. 10, elements 300-320, col. 14, lines 53-65 by distributing image files on a network environment; and

"to display the grouping containing the images of..." at col. 2, lines 17-22 and col. 15, lines 10-12 by implementing image viewer application for viewing image files.

Castor does not specifically teach "human review of the images to accept or reject" and "combining the images with advertising files", though Castor teaches User Interface Display at Fig. 1.

However, Yeskel teaches using operator to review visual images in order to adjust the machine's accept/reject decision-making at Abstract, lines 13-18.

It would have been obvious to one having ordinary skill in the art at the time of the applicant's invention was made to combine Yeskel's reference with Castor's by implementing human intervention on the decision of accepting and rejecting images because by doing so the quality of images selected would have been guaranteed.

The combined Yeskel-Castor reference teaches images capturing/collecting and human review for accepting/rejecting as described earlier.

The combined reference does not specifically teach combining the images with advertising files.

However, Jung teaches supplying multi-media files such as video files, etc with advertising files to users and making the users see or hear the advertisements as playing the multi-media files.

It would have been obvious to one having ordinary skill in the art at the time of the applicant's invention was made to combine Jung and Yeskel's references with Castor's by combining advertising files with image files because by doing so the Castor's system

would have been able to enable a user to avail image files at low cost or free of charge in exchange of viewing advertisements attached to the image files.

Yeskel further teaches sorting the image files by indexing into hierarchical orders of sub-groups and groups at Fig. 5, and col. 2, lines 6-12 and col. 9, lines 1-25.

2. Claims 2, 5-10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Castor et al. (U.S. Patent 6,246,797, hereafter "Castor") in view of Yeskel (U.S. Patent 6,115,509), and further in view of Jung et al. (U.S. Publication 2003/0014310, hereafter "Jung").

As to Claim 2, Castor teaches the following:

"creating one or more digital image files of artwork" at col. 3, lines 59-67 by image capture device to capture images and convert them into digital files;

"transmitting the digital image file" and "transmitting the grouping of digital image files" at Fig. 10, elements 300-320, col. 14, lines 53-65 by using computer systems other than the digital camera system to warehouse the images, store the image files and transfer the files on the internet;

"collecting the digital image file" at col. 4, lines 28-32 and col. 9, lines 26-28 where the captured images are stored as image files and then downloaded to an external device, such as computer;

"accepting or rejecting the digital image file" at col. 4, lines 62-67 where buttons on the image capture device are provided to enable user to select the images to capture and scroll through the view of images to delete the undesired; and

“distributing the grouping” at Fig. 10, elements 300-320, col. 14, lines 53-65 by distributing image files on a network environment; and  
“display the grouping” at col. 2, lines 17-22 and col. 15, lines 10-12 by implementing image viewer application for viewing image files.

Castor does not specifically teach “compiling the accepted digital image files to form a grouping”.

However, Yeskel teaches sorting the image files by indexing into hierarchical orders of sub-groups and groups at Fig. 5, and col. 2, lines 6-12 and col. 9, lines 1-25.

It would have been obvious to one having ordinary skill in the art at the time of the applicant's invention was made to combine Yeskel's reference with Castor's by indexing the image files into groups because indexing and sorting is a must process for managing a large number of records in database system.

The combined Yeskel-Castor reference teaches images capturing/collecting and grouping for accepting/rejecting as described earlier.

The combined reference does not specifically teach combining the advertising files with the accepted images files into grouping.

However, Jung teaches supplying multi-media files such as video files, etc with advertising files to users and making the users see or hear the advertisements as playing the multi-media files.

It would have been obvious to one having ordinary skill in the art at the time of the applicant's invention was made to combine Jung and Yeskel's references with Castor's by combining advertising files with image files because by doing so the Castor's system

would have been able to enable a user to avail image files at low cost or free of charge in exchange of viewing advertisements attached to the image files.

As per claim 5, Castor teaches "...takes a digital photo or scans a picture to create the digital image file" at col. 8, lines 56-58.

As per claims 6 and 8, Castor teaches "...grouping is transmitted over Internet" and "...grouping is transmitted over Internet to remote locations" at col. 14, lines 53-65.

As per claim 7, Castor teaches "...the grouping is transmitted by making a cd-rom or dvd of the grouping and physically transferring the cd-rom or dvd" at col. 14, lines 34-38.

As per claims 9 and 10, Castor teaches "...digital image is transmitted to a collection web site" or "...displayed on a public web site" at Fig. 10, elements 300-320, col. 14, lines 53-65.

As per claim 12, Castor teaches "...grouping is displayed on a personal computer" at col. 15, lines 10-12.

3. Claims 4 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Castor et al. (U.S. Patent 6,246,797, hereafter "Castor") in view of Yeskel (U.S. Patent 6,115,509) and Jung et al. (U.S. Publication 2003/0014310, hereafter "Jung"), as applied to Claims 2, 5-10 and 12, and further in view of Nakano et al. (U.S. Publication 2002/0157019, hereafter "Nakano").

As per claims 4 and 13, the combined Castor-Yeskel-Jung reference teaches a process for capturing, collecting and converting images into image files, and distributing over the internet, as described earlier.

The combined reference does not specifically teach "...digital image files are jpeg and mpeg files", though Castor teaches jpeg format at col. 6, line 2.

However, Nakano teaches jpeg and mpeg formats for data compression at Page 2, [0018].

It would have been obvious to one having ordinary skill in the art at the time of the applicant's invention was made to combine Nakano's reference with the combined reference because they are all devoted to generate and distribute image sets. The further combination of references would have further enhanced the promotion and distribution of digital images through wider scope of displaying tools.

4. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Castor et al. (U.S. Patent 6,246,797, hereafter "Castor") in view of Yeskel (U.S. Patent 6,115,509) and Jung et al. (U.S. Publication 2003/0014310, hereafter "Jung"), as applied to Claims 2, 5-10 and 12, and further in view of Siefken (U.S. Patent 6,433,839).

As per claim 11, the combined Jung-Yeskel-Castor reference teaches a process for capturing, collecting and converting images into image files, and distributing over the internet, as described earlier.

The combined reference does not specifically teach using projector for displaying digital image files, though other displaying means are utilized.

However, Siefken teaches techniques for storing images on films and playing back on projections at col. 4, lines 52-54.

It would have been obvious to one having ordinary skill in the art at the time of the



applicant's invention was made to combine Siefken's reference with the combined reference because all references are devoted to generate, distribute and display image sets. The further combination of references would have further enhanced the promotion and distribution of digital images through larger viewer audience because of using much larger displaying tools.

5. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Castor et al. (U.S. Patent 6,246,797, hereafter "Castor") in view of Yeskel (U.S. Patent 6,115,509).

As per Claim 14, Castor teaches the following:

"digital imagery to capture at least one image of artwork" at col. 3, lines 59-67 where an image capture device of a digital camera system captures images;;

"collecting the digital images captured in (a) above on a collection website" at Fig. 10, element 304, and col. 4, lines 28-32 and col. 9, lines 26-28 where the captured images are collected from an internet web-site environment, stored as image files and then downloaded to an external device, such as computer;

"distributing the grouping over the internet" at Fig. 10, elements 300-320, col. 14, lines 53-65 by distributing image files on a network environment; and

"display the grouping" at col. 2, lines 17-22 and col. 15, lines 10-12 by implementing image viewer application for viewing image files.

Castor does not specifically teach "performing a human review of the images".

However, Yeskel teaches using operator to review visual images in order to adjust the machine's accept/reject decision-making at Abstract, lines 13-18.

It would have been obvious to one having ordinary skill in the art at the time of the applicant's invention was made to combine Yeskel's reference with Castor's by implementing human intervention on the decision of accepting and rejecting images because by doing so the quality of images selected would have been guaranteed.

Yeskel further teaches the following:

"compiling the images into groupings" by indexing into hierarchical orders of sub-groups and groups at Fig. 5, and col. 2, lines 6-12 and col. 9, lines 1-25;

"reviewing the groupings for technical correctness, including format and size" at col. 3, lines 53-67 by operator defining parameters to view the images visually for making accept/reject decision; and

"issuing an identifying code for each image" at col. 4, lines 17-26 by using group number and address of the digital image within the group.

6. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Castor et al. (U.S. Patent 6,246,797, hereafter "Castor") in view of Yeskel (U.S. Patent 6,115,509), as applied to Claim 14, and further in view of Jung et al. (U.S. Publication 2003/0014310, hereafter "Jung").

The combined Yeskel-Castor reference teaches images capturing/collecting and human review for accepting/rejecting as described earlier.

The combined reference does not specifically teach combining advertising files into the grouping.

However, Jung teaches supplying multi-media files such as video files, etc with advertising files to users and making the users see or hear the advertisements as playing the multi-media files.

It would have been obvious to one having ordinary skill in the art at the time of the applicant's invention was made to combine Jung and Yeskel's references with Castor's by combining advertising files with image files because by doing so the Castor's system would have been able to enable a user to avail image files at low cost or free of charge in exchange of viewing advertisements attached to the image files.

7. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Castor et al. (U.S. Patent 6,246,797, hereafter "Castor") in view of Yeskel (U.S. Patent 6,115,509), as applied to Claim 14, and further in view of Siefken (U.S. Patent 6,433,839).

As per claim 11, the combined Yeskel-Castor reference teaches a process for capturing, collecting and converting images into image files, and distributing over the internet, as described earlier.

The combined reference does not specifically teach "the grouping is displayed using a means selected from the group consisting of. front projector, rear projector such as a big screen television, and plasma-based monitors", though other displaying means are utilized.

However, Siefken teaches techniques for storing images on films and playing back on projections at col. 4, lines 52-54.

It would have been obvious to one having ordinary skill in the art at the time of the

applicant's invention was made to combine Siefken's reference with the combined reference because all references are devoted to generate, distribute and display image sets. The further combination of references would have further enhanced the promotion and distribution of digital images through larger viewer audience because of using much larger displaying tools.

8. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Castor et al. (U.S. Patent 6,246,797, hereafter "Castor") in view of Yeskel (U.S. Patent 6,115,509), as applied to Claim 14, and further in view of Nakano et al. (U.S. Publication 2002/0157019, hereafter "Nakano").

The combined Yeskel-Castor reference teaches images capturing/collecting and human review for accepting/rejecting as described earlier.

The combined reference does not specifically teach the image is captured in jpeg or mpeg format", though Castor teaches jpeg format at col. 6, line 2.

However, Nakano teaches jpeg and mpeg formats for data compression at Page 2, [0018].

It would have been obvious to one having ordinary skill in the art at the time of the applicant's invention was made to combine Nakano's reference with the combined reference because they are all devoted to generate and distribute image sets. The further combination of references would have further enhanced the promotion and distribution of digital images through wider scope of displaying tools.

9. The prior art made of record

A. U.S. Patent No. 6,246,797

- B. U.S. Patent No. 6,115,509
- C. U.S. Patent No. 6,433,839
- D. U.S. Pub. No. 2003/0014310
- E. U.S. Pub. No. 2002/0157109

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- F. U.S. Pub. No. 2002/0080168
- G. U.S. Patent No. 6580466
- H. U.S. Pub. No. 2002/0041287
- I. U.S. Pub. No. 2002/0166123
- J. U.S. Pub. No. 2002/0144258
- K. U.S. Patent No. 6338094
- L. U.S. Patent No. 6426778

### ***Response to Arguments***

10. The Applicants' arguments filed on February 2, 2004 have been fully considered but they are not persuasive, for the Examiner's response, please see discussion below:

a) At Page 8, lines 8-15, Claims 2, 5-10 and 12, Applicants argued "**Claims ... stand rejected under 35 USC §102(e) as being anticipated by Castor et al, US Patent 6,246,797. Although Castor describes some of the elements of applicants' invention, inventions are clearly different. The invention of Castor relates to a system of storing and managing video and picture files in a variety of image quality levels, while the instant invention relates primarily to a distribution system for disseminating a grouping of files for entertainment purposes. The claims have been amended to more clearly reflect this**

**aspect of the present invention. It is therefore respectfully requested that this rejection be withdrawn. "**

As to the above argument a), the Examiner disagreed because Castor reference is directed to image and video libraries distributed through network and internet as evidenced by Fig. 10 and col. 14, lines 53-65. Furthermore, Castor's reference teaches distributing the image and video libraries to client's TV set up boxes for entertainment purposes at col. 1, lines 56-62. As to amended claims as mentioned, the Examiner has addressed them in Item 2 of this Office Action.

b) At Page 8, line 17 through Page 9, line 11, Claim 1, Applicants continued to argue **"Claim 1 stands rejected under 35 USC §103 ... over Castor et al in view of Anderson... Combining Castor with Anderson does not overcome the deficiencies of Castor to render the present invention. Anderson teaches a method of marking or stamping a digital image. Examiner asserts that Anderson teaches a "means to sort those images into a grouping" at col. 4 [0046] lines 1-11 and 14-17. Although Anderson describes a method of using a digital camera for reviewing, sorting and editing a camera's contents, there is no suggestion that this method be combined with advertising files for distribution over the internet. Since there is no suggestion to combine these teachings, it is applicants' position that these references should not be combined and therefore do not constitute an adequate basis for an obviousness rejection. Even if they were to be properly combined, they would not render obvious the applicants' invention, as now claimed".**

As to the above argument b), Applicants repeated arguments on the following items:  
b1). Distributing images on internet,

- b2). Combining advertising files with images for distribution, and
- b3). Combination of Castor and Anderson references.

As to item b1), the Examiner disagree and reassert the statements made in response to Item a) above: At Fig. 10, col. 14, lines 53-65 and col. 1, lines 56-62, Castor teaches distributing image and video libraries over the internet.

As to item b2), distributing advertisement with images is not a limitation in the original Claim 1, although noted Castor reference teaches distributing image and video through TV setup boxes at col. 1, lines 56-62 where inserting advertisement in TV programs is a common practice.

As to item b3), in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both Castor and Anderson references direct to digital image processing and storage, the combination of the two references is to enhance the management of distributing digital files over internet. The combination is obvious because Anderson reference's stamping method would have provided great flexibility to Castor's system which is dedicated to storage management of image and video libraries for distributing over

internet, as evidenced by the "BACKGROUND OF THE INVENTION" sections of the two references.

c) At Page 9, lines 11-16, Claim 1, Applicants further argued **"the filing date of Anderson is December 9,2002, and the filing date of Applicants' application is May 14, 2001. Since the Anderson reference was filed nearly 18 months after applicants' filing, this reference should be withdrawn from consideration"**.

As to the above argument c), the Examiner disagree because Anderson reference is a continuation of application 08/932,740, which was filed on 9/17/1977 and is now patented (U.S. 6,532,039). Furthermore, in responding to the amended claims, new references have replaced the Anderson reference in Items 1 to 7 in this Office Action.

d) At Page 9, line 17 through Page 10, line 3, Claims 3, 4 and 13, Applicants argued **"Claims ... rejected under 35 USC§103(a) ... over Castor et al and further in view of Ball et al. The filing date of Applicants patent application May 14, 2001. The filing date of the Ball reference is March 26, 2002. Since the filing date of Applicants' application predates the filing date of the reference, this is not a proper reference to apply against the instant application. For this reason, this ground for rejection should be withdrawn."**

As to the above argument d), the Examiner disagree because Ball reference is a continuation in part application of a prior application 09/439,482, filed 11/12/99 which is also continued with application 09/809,385, filed 3/15/2001 where Ball's teaching can be traced to, for example, Paragraphs [0085] and [0143] of 09/809,385.



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e) At Page 10, lines 4-15, Claim 11, Applicants further argued "Claim 11 stands rejected under ... 103(a) ... over Castor et al in view of Siefken. Siefken teaches a method for generating a set of images for generating "special effects" by displaying a series of imperceptibly different images. This is a far cry from the promotion of artists' efforts through use of a broadcast art show which combines artwork and advertising for entertainment. In contrast to Siefken, the groupings of images of the present invention are very perceptibly different. Applicants admit that the use of a projector is not novel. However, the use of a projector to distribute and display groupings of art images combined with advertising in commercial venues and private residences via a slide show utilizing high-resolution video media is novel."

As to the above argument e), the Examiner disagree because Siefken does teach storing images and playing back on projections. On the other hand, Castor teaches distribution of image and video over internet. It is obvious the combination of the references would have extended Siefken and Castor's system to a much wider audience.

11. In light of the forgoing arguments, the U.S.C 102 and 103 rejection for Claims 1-30 is hereby sustained.

### **Conclusion**

12. THIS ACTION IS MADE FINAL.

The Applicants are reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. The prior art made of record, listed on form PTO-892, and not relied upon, if any, is considered pertinent to applicant's disclosure.

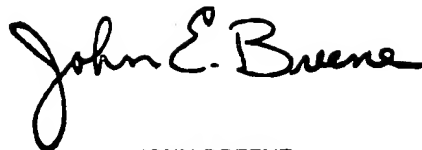
If a reference indicated as being mailed on PTO-FORM 892 has not been enclosed in this action, please contact Lisa Craney whose telephone number is (703) 305-9601 for faster service.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kuen S Lu whose telephone number is 703-305-4894. The examiner can normally be reached on 8 AM to 5 PM, Monday through Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Breene can be reached on 703-305-9790. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

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Page 18

Kuen S. Lu  
Patent Examiner  
April 9, 2004

A handwritten signature in black ink, reading "John E. Breene". The signature is written in a cursive style with a large, looping initial "J".

JOHN BREENE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100